93-936

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NORTH STAR STEEL COMPANY, INC.,
Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

VINCENT CANDIELLO *
BRIAN P. MURPHY
MORGAN, LEWIS & BOCKIUS
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
(717) 237-4000
Attorneys for Petitioner

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Under the Worker Adjustment and Retraining Notification Act, does an award of "back pay" for calendar days within the notification period that never would have been worked, even if sufficient notice had been provided, contravene the express terms of the statute, Congressional intent, and applicable canons of statutory construction?

PARTIES BELOW

Petitioner/Defendant Below

North Star Steel Company, Inc. ("North Star") is a wholly-owned subsidiary of Cargill, Inc., which is a privately-held corporation. None of Cargill's shareholders is itself a publicly-traded entity.

Respondent/Plaintiff Below

The United Steelworkers of America, AFL-CIO-CLC ("the Union") is the Respondent herein and was the Plaintiff below. The Judgment entered by the District Court and affirmed on appeal resulted in an award of monetary damages to numerous individuals on whose behalf the Union initiated this action. The names of these individuals are set forth in the Appendix hereto ("App.") at 17a-26a.

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PETITION FOR A WRIT OF CERTIORARI

North Star, through the undersigned counsel, respectfully petitions for a writ of certiorari to review the judgment and opinion of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 5 F.3d 39 (App. 1a-10a). The order of the district court is reported at 809 F. Supp. 5 (App. 27a-35a). An earlier decision of the district court is reported at 817 F. Supp. 522 (App. at 36a-41a).

JURISDICTION

The judgment of the court of appeals was entered on September 14, 1993. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1988).

STATUTE INVOLVED

This case involves an interpretation of the Worker Adjustment and Retraining Notification Act ("WARN Act" or "the Act"). 29 U.S.C. §§ 2101-09 (1988). The principle relevant provision is Section 5(a)(1) of the Act, which provides:

> ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS
>
> (a) CIVIL ACTIONS AGAINST EMPLOYERS.—(1) Any employer who orders a plant closing or mass layoff in violation of Section 3 of this Act shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—
>
> (A) back pay for each day of violation at a rate of compensation not less than the higher of—
>
> (i) the average regular rate received by such employee during the last 3 years of the employee's employment; or
>
> (ii) the final regular rate received by such employee; and
>
> (B) benefits under an employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.
>
> Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one half the number of days the employee was employed by the employer.

29 U.S.C. § 2104(a)(1) (1988).

STATEMENT OF THE CASE

North Star operates a plant in Milton, Pennsylvania ("Milton plant") where it produced hot-rolled steel bars and other steel products. In early 1991, North Star employed over 280 individuals at the Milton plant. By late February, however, poor economic conditions and a recent transformer failure necessitated a sudden decision to cease most production operations there. Accordingly, on February 25, 1991, North Star laid-off almost its entire Milton work force without prior notice. Those affected included approximately 250 employees represented by the Union ("represented employees").

On September 9, 1991, the Union initiated this litigation, asserting that the represented employees were entitled to damages under the WARN Act as a result of the February 25, 1991 cessation of production. The Union later moved for summary judgment, and, in reply, North Star acknowledged that a technical violation of the WARN Act had occurred. North Star explained that, at the time of the cessation of operations, it had no idea how long the layoff would last. Moreover, it demonstrated its concern that a premature notification under the WARN Act would have itself constituted a violation of the Act.

Nonetheless, on April 9, 1992, the district court granted the Union's motion for summary judgment as to whether North Star's sudden cessation of operations at the Milton plant entitled the represented employees to damages under the Act. The district court concluded North Star had failed to make a required showing that it had reasonable grounds to believe that its failure to give notice was not a violation of the WARN Act. As a result, the district court declined to ameliorate any damages to which the represented employees were entitled. App. at 39a-40a. However, the court did not make a determination as to the amount of damages to which the represented employees were entitled because the Union requested that the parties

be given an opportunity to stipulate to damages. App. at 40a.

The parties were able to agree that the normal work schedule for the represented employees was an eight-hour day, five-day work week. The parties also did not disagree as to the violation period for which damages would be calculated. Nonetheless, the parties could not stipulate as to the amount of damages North Star owed the represented employees because there was a disagreement as to the number of days within the violation period for which wage-loss damages should be paid. This disagreement arose from the issue of statutory interpretation North Star now presents for review.

Because the parties were unable to resolve the matter of wage-loss damages, the Union again moved for summary judgment as to the amount of damages to which the represented employees are entitled. Consequently, the district court was presented with the parties' competing views as to the meaning of the Section 5(a)(1)'s damages section, which provides "back pay for each day of violation . . . . Such liability shall be calculated for the period of the violation. . . ." 29 U.S.C. § 2104(a)(1) (1988).

North Star maintained that the WARN Act provides back pay only for each day of the violation period for which wages otherwise would have been paid if notice had been provided. Thus, North Star opined that its obligation was limited to paying "back pay" for each of the forty-four scheduled working days within the specific sixty-day violation period involved herein. In contrast, the Union asserted that each of the represented employees was entitled to eight hours of pay for each of the sixty calendar days within the violation period, without regard to whether the represented employees would have worked all of those days. Thus, it maintained that the represented employees were entitled to sixty days of pay at eight hours per day, or 480 hours of "back pay."

The district court granted the Union's motion, determining that "[e]ach day that North Star failed to notify its employees of that layoff in advance of February 25, 1991, is a 'day of violation' for the purposes of calculating damages." App. at 30a (quoting 29 U.S.C. § 2104 (a)(1)(A) (1988)). North Star paid the represented employees the amount not in dispute and filed an appeal.

The court of appeals affirmed the district court's determination that the WARN Act requires payment of damages for each day of the violation period. The court rejected North Star's argument that Congress' codification of the concept of "back pay" evidenced an intent to fashion a make-whole remedy. App. at 6a-8a. The Court also declined to determine whether its construction of Section 5(a)(1) was contrary to the intent of Congress as evidenced by the fact that it would result in bizarre outcomes when applied to individuals who do not work a traditional eight-hour day, five-day work week. App. at 8a-9a & n.6.

REASONS FOR GRANTING THE PETITION

The importance of the issue presented here transcends the specific dispute about the damages that the represented employees are entitled to recover from North Star. Rather, the court of appeals' construction of Section 5(a)(1) will have significant implications for every voluntary compliance effort and every contested case under the WARN Act.[1]

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[1] The issue presented here also was argued before the Fifth Circuit Court of Appeals on August 5, 1993 in *Carpenters Dist. Council v. Dillard Dept. Stores, Inc.*, Nos. 92-3419, 3613, *reviewing* 778 F. Supp. 297 (E.D. La. 1991). North Star is unaware of any disposition of *Dillard Dept. Stores* as of the date this Petition was sent to the printer. The other reported cases in which damages have been discussed utilize different assumptions. *Compare Jones v. Kayser Roth Hosiery, Inc.*, 748 F. Supp. 1292 (E.D. Tenn. 1990), *modified*, 753 F. Supp. 218 (1990) (utilizing make-whole approach), *with United Electrical Workers v. Maxim*, 5 Indiv. Empl. Rts. Cas. (BNA) 629 (D. Mass. 1990) (awarding sixty days of pay).

The result reached by the court of appeals also conflicts with this Court's repeated admonitions regarding statutory construction. First, the court failed to give effect to the settled meaning of the terms employed by Congress in the WARN Act. Second, the interpretation of the Act adopted by the court results in anomalies and absurdities that belie the court's determination that the WARN Act is unambiguous. Finally, given the court of appeals' construction of the Act, the other provisions of Section 5 no longer can be read in consonance with Section 5(a)(1). The result of these departures from this Court's directives is a direct contravention of the expressed intent of Congress to fashion a make-whole remedy.

I. THE ISSUE PRESENTED IS OF THE UTMOST IMPORTANCE TO THE GROWING NUMBER OF EMPLOYERS AND EMPLOYEES AFFECTED BY THE OPERATION OF THE WARN ACT.

Unfortunately, events such as the cessation of operations at North Star's Milton facility are becoming commonplace. The United States Department of Labor Bureau of Labor Statistics recently conducted a Mass Layoff Statistics program. A Government Accounting Office study ("GAO study") of the results of that program concludes that the economic devastation resulting in, and from, plant closures and mass layoffs is both pervasive and growing.

Even in the absence of critical data from heavily-industralized states such as California, Michigan, and Ohio, the GAO study identified "3,078 plant closures or mass layoffs affecting 50 or more workers in 1990. In 1991, the number of such events increased by 26 percent to 3,891. As a result of such events in 1990 and 1991, about 1.4 million workers lost their jobs." GOVERNMENT ACCOUNTING OFFICE, PUB. NO. GAO/HRD-93-18, DISLOCATED WORKERS: WORKER ADJUSTMENT & RETRAIN-

ING NOTIFICATION ACT NOT MEETING ITS GOALS 12 (1993).[2]

Another study published by the Department of Labor concludes that between 1987 and 1992, "the number of workers who lost their jobs due to plant closings, company failures, or other curtailments in employment totaled 5.6 million." This study focused on individuals who were separated involuntarily for economic reasons from a position in which they had three or more years of service. During the stated period, 52.1% of those employees were separated as the result of plant closure or relocation. JENNIFER M. GARDNER, RECESSION SWELLS COUNT OF DISPLACED WORKERS, *in* UNITED STATES DEP'T OF LABOR, MONTHLY LABOR REVIEW 6 (vol. 116 No. 6 June 1993).

The express focus of the WARN Act is on requiring advance notice of such events. Yet, where notice is not provided for any reason, it is imperative under the Act that there be an easily-discernible formula for determining an employee's entitlement to damages. Indeed, where notice is not provided, the WARN Act provides incentives for an employer to make prompt payment of "back pay" damages to ameliorate the instant economic effects of displacement.[3] The same underlying policy creates a compelling interest in the prompt settlement of potential or actual litigation under the WARN Act.

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[2] Although the GAO study is inconclusive as to how many of these occurrences would give rise to liability under the WARN Act, the GAO was able to identify 2,163 events during calendar year 1990 to which the WARN Act probably would apply. *Id.* at 40, app. II.

[3] *See* H.R. CONF. REP. NO. 576, 98TH CONG., 2D SESS. 1053 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2086. The House Conference Report for the Trade and Competitiveness Act ("Trade Act"), which contained the provisions of the WARN Act prior to the President's veto of the Trade Act, were incorporated into the legislative history of the WARN Act as reintroduced. *See* 134 CONG. REC. S8692 (daily ed. June 28, 1988); *id.* H5505 (daily ed. July 18, 1988).

However, the statutory policy favoring a prompt remedy for WARN Act violations is seriously undermined by the court of appeals' decision. Put simply, the methodology employed is unworkable. As a result, voluntary settlement or expedient litigation of such matters will become increasingly improbable. Although the method of calculation used by the court purportedly is simplistic, in reality it will create an unmanageable task of calculating WARN Act liability. Moreover, as shown below, the effect of the court of appeals' decision will impose staggering sums of liability on employers who employ part-time workers, far exceeding the exposure to employers that utilize only full-time workers. There simply is no reason to believe that Congress ever intended such an anomaly.

Given the large numbers of individuals and businesses that are, and will be, affected by the court of appeals' decision, North Star respectfully submits that this Court should grant this Petition and correct the court of appeals' interpretation of Section 5(a)(1). This relief is necessary in order to produce a rational outcome that both comports with the express intent of Congress and permits the proper meaning to be given to the remaining provisions of Section 5.

II. THE COURT OF APPEALS' DECISION TRANSGRESSES THIS COURT'S DIRECTIVES FOR INTERPRETING CONGRESSIONAL ENACTMENTS.

A. The Court of Appeals' Interpretation of Section 5(a)(1) Creates Arbitrary and Irrational Results.

The court of appeals refused to consider the anomalies that result from its interpretation because it concluded that Section 5(a)(1) is unambiguous. App. at 8a (citations omitted). While North Star recognizes that unambiguous statutes should be interpreted consistent with their plain meaning, *see, e.g., Connecticut National Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992) (citations omitted), this canon of construction should not be used

as blinders to all else that results from a particular interpretation.

As this Court repeatedly has recognized, the existence of anomalous or absurd results may itself establish that the statute is not as unambiguous as it may first appear. *Cf. Watt v. Alaska,* 451 U.S. 259, 266 (1981) ("[A]scertainment of the meaning apparent on the face of a single statute need not end the inquiry.") (citations omitted). Indeed, under the *"Holy Trinity* doctrine," *Public Citizen v. United States Dep't of Justice,* 491 U.S. 440, 473 (1989) (Kennedy, J., concurring) (citing *Church of the Holy Trinity v. United States,* 143 U.S. 457, 472 (1892)), the existence of resulting anomalous or absurd outcomes may negate any showing that the statute is unambiguous.

The court of appeals' refusal to address whether its construction of Section 5(a)(1) "would compel an odd result," *Green v. Bock Laundry Machine Co.,* 490 U.S. 504, 509 (1984), ignores North Star's showing that the construction the court ultimately adopted results in gross disparities in "back pay" awards under the WARN Act. Indeed, the amount to which an individual is entitled under the court of appeals' interpretation bears no rational relationship to the amount that the individual would have earned if notice had been provided.

Specifically, the court's interpretation of Section 5(a)(1) eradicates the function that such variables as hours per work week or the number of work days in a week perform in the calculation of "back pay." Indeed, the amount an individual normally would have worked in a week becomes irrelevant under the court of appeals' interpretation.

A prime example of the many resulting anomalies presented by the court's decision is that full-time (forty hour per week) employees may in fact receive up to 25% less in WARN Act damages than employees who are

scheduled to work as little as twenty hours per week.[4] Suppose a given plant operates on a seven-day schedule with full-time employees scheduled for five eight-hour days, and relief crews scheduled for two ten-hour shifts per week. Thus, the normal weekly scheduled number of hours is forty for full-time employees, and twenty for relief-crew employees.

If the facility is shut down without notice, the court of appeals' measure of damages would, of course, provide 480 hours of pay to the eight-hour per day, five-day per week employees, as it did here. The fallacy of the court's reasoning, however, is evidenced by the fact that the relief-crew employees would receive 600 hours of pay (ten hours per day x sixty days). Thus, the relief-crew members would receive 25% more in WARN damages than those who were regularly scheduled to work twice as many hours.

Not only is such an outcome nonsensical, it also imposes a far greater financial burden on employers of part-time workers. This is especially disconcerting given the fact that the statute and its legislative history are devoid of any indication of a policy favoring the imposition of greater financial burdens on employers of part-time employees. To the contrary, the interest in alleviating the effects of job displacement is implicated the most

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[4] The court of appeals' paraphrasing of the anomaly argument presented by North Star contains an assertion never made below. The court apparently believed that North Star took the position that an employee, who worked only one ten-hour shift per week, was entitled to WARN damages. P. App. at 8a n.6. North Star never took this position as the WARN Act apparently requires that an employee must work at least twenty hours per week in order to be entitled to damages thereunder. 29 U.S.C. § 2101(a)(2), (8) (1988). Regardless, because the court's interpretation renders meaningless the total number of hours actually worked by a particular employee in a work week, its mistaken characterization of North Star's position does not alter the anomaly presented by the court's conclusion.

when full-time employees are affected by a plant closure or mass layoff.

The anomaly described above also is possible among those who are scheduled the same number of hours in a week, but who work a differing number of days within the week. For example, assume that one group of affected employees in a facility worked four ten-hour shifts per week, while another group of employees in the same plant worked five eight-hour shifts per week.

In this example, if the facility is shut down without notice, the court of appeals' interpretation of the WARN Act would provide employees who worked five eight-hour days with 480 hours of "back pay" (consistent with the finding affirmed by the court of appeals), while the employees who worked four ten-hour days would receive 600 hours of "back-pay." This 120-hour pay (25%) differential also is absurd given the fact that both sets of employees regularly work forty hours per week. The potential discrepancies become more apparent when one considers the vast array of scheduling devices (including twelve-hour shifts and flex-time) that are utilized throughout industry today.

Unfortunately, the court of appeals failed to address these issues. The court opined that, because the anomalous results described did not occur with respect to any of the individuals concerned herein, it need not address the issue. App. at 8a-9a & n.7.[5] However, the court of appeals should not have so readily disregarded the logical consequences of its decision when it adopted an interpretation that will have effects on all subsequent actions. Indeed, such a declination eschews the purpose of the

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[5] Likewise, the court stated that the disputed issue assumed an interpretation of Sections 5(a)(1)(A)(i) and (ii) which was not in dispute. *Id.*

Holy Trinity doctrine. Either the court should have opted for a construction that avoids inconsistent and anomalous outcomes, *see, e.g., United States v. Fausto,* 484 U.S. 439, 450-51 & n.4 (1988), or it should have turned to such aids as legislative history to determine the meaning of Section 5(a)(1), *see, e.g., Public Citizen,* 491 U.S. at 453; *Immigration & Naturalization Service v. Cardoza-Fonseca,* 480 U.S. 421, 431-33 & n.12 (1987) (plurality); *Train v. Colorado Public Interest Research Group,* 426 U.S. 1, 10 (1976); *United States v. American Trucking Ass'n,* 310 U.S. 534, 543 (1940).

The existence of an anomalous or absurd outcome makes it "entirely appropriate to consult all public materials," *Bock Laundry Machine Co.,* 490 U.S. at 527 (Scalia, J., concurring), including legislative history. Here, resort to the legislative history confirms North Star's position that Congress intended to provide a make-whole remedy for violations of the WARN Act. The Senate's Report, as originally introduced by Senator Metzenbaum,[6] makes clear the make-whole intent of the provision that has become Section 5(a)(1) of the WARN Act:

> For violations of the notice provisions, damages are to be measured by the wages and fringe benefits (including reimbursement for medical expenses) *the employee would have received* had the plant remained open or the layoff been deferred until the conclusions [sic] of the notice period, less any wages or fringe

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[6] Senators Metzenbaum, Kennedy, and Simon originally introduced the Bill as the Economic Dislocation & Worker Adjustment Assistance Act (S. 538) in 1987. S. REP. No. 62, 100TH CONG., 1ST SESS. 14 (1987). Senate Majority Leader Robert Byrd called up the Bill as an amendment to the Omnibus Trade Act of 1987 ("OTA"). 133 CONG. REC. S 9389-90 (daily ed. July 8, 1987). After a Presidential veto of the OTA, Senator Metzenbaum reintroduced the plant-closure and mass-layoff provisions as the WARN Act on June 16, 1988. Senator Metzenbaum himself noted that the WARN Act provisions as introduced were identical to the provisions of S. 538 as incorporated into the OTA at the time of its earlier passage. 134 CONG. REC. S. 8375 (daily ed. June 22, 1988).

> benefits received from the violating employer during that period.

S. REP. NO. 62, 100TH CONG., 1ST SESS. 24 (1987) (emphasis added).

Indeed, in defending the current text of Section 5(a)(1) of the WARN Act in Senate floor debates, Senator Metzenbaum emphasized:

> The fact is we do provide that if the notice is not given then there is an obligation to *make up the salary,* but we do not want anybody to think that this bill is a way of providing additional financial obligations on the part of employers. That is not the object of this Bill.

134 CONG. REC. S 8542-43 (daily ed. June 24, 1988) (emphasis added). Accordingly, the interpretation North Star proffers merely effectuates the expressed intent of the WARN Act's chief sponsors. *See National Woodwork Mfrs. Ass'n. v. NLRB,* 386 U.S. 612, 639 (1967) ("It is the sponsors that we look to when the meaning of the statutory words is in doubt.") (citations omitted). Clearly, the court of appeals' decision contravenes congressional intent.

B. The Court of Appeals' Interpretation of Section 5(a)(1) Ignores the Settled and Plain Meaning of the Terms Employed by Congress.

The court of appeals also dismissed North Star's showing that the use of the terms "back pay" and "compensation" in Section 5(a)(1) evidences clear intent by Congress to fashion a make-whole remedy through the use of settled terms having recognized meaning. App. at 5a-8a. In doing so, the court adopted an interpretation that patently offends this Court's repeated admonitions to give words in a statute the effect of their ordinary meaning.

This Court repeatedly has advised: "When Congress codifies a judicially defined concept, it is presumed, ab-

sent an express statement to the contrary, that Congress intended to adopt the interpretation placed on that concept by the courts." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 813 (1989) (citing *Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 501 (1986); *see also Ardestani v. Immigration & Naturalization Service*, 112 S. Ct. 515, 520 (1993) (" '[T]he legislative purpose is expressed by the ordinary meaning of the words used'.") (quoting *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)); *Bock Laundry Machine Co.*, 490 U.S. at 527 (Scalia, J., concurring); *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987) (citations omitted).

The phrase "back pay," as a term of art, has acquired a settled meaning within congressional enactments. The meaning of "back pay" has been developed through its use in Section 10(c) of the National Labor Relations Act, 29 U.S.C. § 160(c) (1988) ("NLRA"). This Court has instructed that the term provides "payment . . . of a sum equal to what [the employee] would have earned" during the period for which the Act was violated. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197 (1941); *see also Social Security Bd. v. Nierotko*, 327 U.S. 358, 364-65 (1945) (citations omitted).

Congress extended the use of the phrase "back pay" to the remedies provisions of other enactments such as the Civil Rights Act of 1964 ("1964 CRA"), the Mine Safety and Health Amendments ("MSHA"), the Occupational Safety and Health Act of 1970, the Civil Service Reform Act, the Fair Labor Standards Amendments of 1974 ("FLSA Amendments"), and the Back Pay Act.[7]

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[7] *See* Sections 706 and 716 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(g)(1), 2000e-16(b) (1988); Section 105(c)(3) of the Mine Safety & Health Standards Amendments, 30 U.S.C. § 815(c)(3) (1988); Section 11(c)(2) of the Occupational Safety

Consequently, this and other courts have construed the meaning of "back pay" in those statutes in *pari materia* with the *Phelps Dodge* interpretation provided under the NLRA. This includes Congress' utilization of the phrase in the 1964 CRA, *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 419 n.11 (1975); *Ford Motor Co. v. EEOC*, 458 U.S. 219, 226 n.8 (1982); *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 366-67 (1977); Franks v. Bowman Transp. Co., 424 U.S. 747, 768-70 (1976), the FLSA Amendments, *Smith v. Office Personnel Mgmt.*, 778 F.2d 258 (5th Cir. 1985), *cert. denied*, 476 U.S. 1105 (1986), and the provisions of MSHA, *Brock ex rel. Parker v. Metric Constr.*, 766 F.2d 469 (11th Cir. 1985).

Thus, the court of appeals' rejection of a make-whole interpretation of Section 5(a)(1) constitutes an impermissible retreat from the principle that Congressional intent is expressed in the use of terms with settled meaning. *See Morissette v. United States*, 342 U.S. 246, 263 (1952); *accord Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 113 S. Ct. 1489, 1495 (1993) ("Courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry 'their ordinary, contemporary, common meaning'.") (quoting *Perrin v. United States*, 444 U.S. 37,

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& Health Act of 1970, 29 U.S.C. § 660(c)(2) (1988); Section 15(b) of the Fair Labor Standards Amendments of 1974, 29 U.S.C. § 633a(b) (1988); Section 102 of the Civil Service Reform Act, 5 U.S.C. § 7118(a)(7)(c) (1988); Section 1(34)(C) of the Back Pay Act, 5 U.S.C. § 5596 (1988). Other statutes simply adopt the concept of "back pay" by referencing the aforementioned statutes. *See* Section 120(a) of the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978, 29 U.S.C. § 794a(a)(1) (1988) (amending Rehabilitation Act of 1973); Sections 107 and 203 of the Americans with Disabilities Act, 42 U.S.C. §§ 12117(a), 12133 (Supp. III 1991) (incorporating Rehabilitaiton Act of 1973 provisions); Section 307 of the Civil Rights Act of 1991, 2 U.S.C. § 1207(h) (Supp. IV 1992) (incorporating 1964 CRA provisions to Senate fair emplyoment practice provisions).

42 (1979)); *Kungys v. United States*, 485 U.S. 759, 770 (1988) (citing *NLRB v. AMAX Coal Co.*, 453 U.S. 322, 329 (1981)).

The fact that the courts regularly turn to the NLRA meaning of the term "back pay" is especially instructive here as the close relationship between the NLRA and the WARN Act is well-recognized. Both the WARN Act itself, as well as its implementing regulations, repeatedly incorporate NLRA provisions.[8] Accordingly, the courts regularly have turned to NLRA precedent to give meaning to the provisions of the WARN Act. For example, the district court in this action relied upon NLRA precedent in granting Respondent's request for prejudgment interest. App. at 33a; *see also Damron v. Rob Fork Mining Corp.*, 739 F. Supp. 341 (E.D. Ky. 1990), *aff'd*, 945 F.2d 121, 124 (6th Cir. 1991) (citations omitted) (both courts adopting the NLRB's test for determining whether there exists a "reasonable expectation of recall" from layoff" under WARN Act regulations); *accord Kildea v.*

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[8] *See* 29 U.S.C. § 2101(a)(4) (1988) (incorporating the NLRA's definition of "exclusive representative" as the "representative" under WARN); *id.* § 2102(a)(1) (imposing a duty on the employer to provide a WARN notice to the affected employees' representative); *id.* § 2103(2) (exempting strikes, lockouts, and the hiring of permanent replacements from the coverage of WARN); *id.* § 2104(a)(5) (providing the employees' representative with standing to initiate a WARN suit); *id.* § 2108 (providing that "[t]he giving of notice pursuant to [WARN], if done in good faith . . . shall not constitute a violation of the [NLRA]"); *see also* 20 C.F.R. § 639.1(g) ("Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN . . . ."); *id.* § 639.3(d) (incorporating NLRA definition of exclusive representative); *id.* § 639.5(d) (incorporating the determination of a striker's status from the NLRA to determine when notice must be given); *id.* § 639.6 (requiring notice be given to exclusive representatives); *id.* § 639.7(c) (detailing the information that must be provided to the employees' exclusive representative); *id.* § 639.7(e)(6) (requiring that the employer inform the local government of the name of the employees' exclusive representative).

Elector Wire Prods., Inc., 775 F. Supp. 1014, 1016 n.2 (E.D. Mich. 1991) (citing *Damron*).[9]

The careful dovetailing of the NLRA and the WARN Act confutes the court of appeals' determination that Congress intended a meaning for "back pay" in the WARN Act that is different from the meaning ascribed to that term in the NLRA. *Cf. Bock Laundry Machine Co.*, 490 U.S. at 527 (Scalia, J., concurring) (noting that terms should be given an interpretation that is "most compatible with the surrounding body of law into which the provision must be integrated.").

Congress' intent to fashion a make-whole remedy is buttressed further by its characterization of WARN Act damages as "compensation." 29 U.S.C. § 2104(a)(1)(A) (1988). This term also clearly connotes the intent to provide a remedy in the nature of an "[i]ndemnification, . . . [or] making whole." BLACK'S LAW DICTIONARY 283 (6th ed. 1991). In light of the settled meaning of the terms employed in Section 5(a)(1) of the WARN Act, the court of appeals' interpretation of Section 5(a)(1) represents a clear departure from the express intent of Congress.

C. The Court of Appeals' Interpretation of Section 5(a)(1) Renders Meaningless Sections 5(a)(2)(A) and 5(a)(3).

In reaching its determination that Section 5(a)(1) requires payment of damages during times in which no damages were incurred, the court of appeals quoted

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[9] In fact, the applicability of the NLRA to plant closing issues continues to be a topic of much debate in labor-law circles in light of a recent NLRB pronouncement on the issue. *See Dubuque Packing Co.*, 303 NLRB 386 (1991), *enf'd*, 1 F.3d 24 (D.C. Cir. 1993); *see also* Peter F. Munger *et al.*, *Plant Closures & Relocations Under the National Labor Relations Act*, 5 GA. ST. L. REV. 77, 81-83 (1988); FRANCIS A. O'CONNELL, JR., PLANT CLOSINGS: WORKER RIGHTS, MANAGEMENT RIGHTS & THE LAW 17 (1986) (stating that the NLRA applies to plant closings both in the duty to bargain and through Section 8(a)(3)'s discrimination prohibitions).

United States v. Nordic Village, Inc., 112 S. Ct. 1011, 1015 (1992), for the proposition that "a statute must, if possible, be construed in such fashion that every word has some operative effect." App. at 6a. Unfortunately, the result of the court's decision is a defiance of this very principle.

As shown above, the court of appeals' interpretation strips the terms "back pay" and "compensation" of their intended meaning, and thus, of their operative effect. In addition, the court's decision also eviscerates the offset provision of Section 5. Subsection 5(a)(2)(A) of the Act provides: "The amount for which an employer is liable under [Section 5(a)(1)] shall be reduced by any wages paid by the employer to the employee for the period of the violation." 29 U.S.C. § 2104(a)(2)(A). The Conference Report that was adopted as the legislative history of the WARN Act, *see supra* note 3, explains that the employer's reduction of its liability through the payment of wages for hours worked is coextensive with the extent of that liability.

The Conference Report provides an example which relates to WARN Act liability that is triggered by a reduction of hours in excess of fifty percent (50%). *See* 29 U.S.C. § 2101(a)(6)(C). The Conference noted that an employer who reduced hours by 75% could offset its WARN Act liability by the amount paid for the remaining 25% of hours worked. H.R. CONF. REP. NO. 576, 98TH CONG., 2D SESS. 1052 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2086. Likewise, where as here, there are forty-four working days within the specific sixty-day violation period at issue, an employer should have a 25% offset if a given employee works eleven days.

Under the court of appeals' interpretation, however, the employer would be liable not only for the remaining 75% of earnings lost, but also for the nonscheduled days for which the employee had not worked. Taken to its logical end, even if a given employee worked every

scheduled day of the violation period to assist in the shutdown of an affected facility after his or her coworkers had been laid off, he or she would nonetheless be entitled to "back pay" for the preceding nonscheduled days (e.g. weekends) within the violation period. Such a result simply cannot be squared with the intent of Congress as expressed in the Conference Report.

The court's interpretation also creates an irregularity in the plain meaning of Section 5(a)(3)—the WARN Act's civil penalties provision. That Section permits an employer to avoid the payment of fines to a governmental unit if it renders payment of Section 5(a)(1) "back pay" to aggrieved employees within three weeks of a plant closure or mass layoff. 29 U.S.C. § 2104(a)(3). If Section 5(a)(1) means what the court of appeals says, then employers would be required to pay a full measure of sixty days of pay to the employees to escape civil-penalty liability.

Yet, employers could simply escape this excess liability by providing notice and keeping employees on the payroll without actually assigning their normal duties to them during the sixty day period. *See* Preamble to WARN Act Regulations, 54 Fed. Reg. 16048 (April 20, 1989) ("[N]either WARN nor the regulations dictate the nature of work to be performed—*or whether work must be performed*—during a period of employment after notice . . . has been given.") (emphasis added).

Again, the only manner in which this paradox can be resolved is to construe Section 5(a)(1) as providing make-whole relief. Otherwise, the court of appeals' interpretation of Section 5(a)(1) will present irreconcilable tensions with the mandates of Section 5's offset and civil-penalties provisions. *See Commissioner of Internal Revenue v. Keystone Consol. Indust.*, 113 S. Ct. 2006, 2011 (1993) (recognizing that statutes "must be given 'as great an internal symmetry and consistency as its words permit'.") (quoting *Commissioner Internal Revenue v. Lester*, 366 U.S. 299, 304 (1961)).

CONCLUSION

If left uncorrected, the court of appeals' determination will result in staggering disparities in both the amounts received by aggrieved employees, and the amounts which faltering employers must pay. Employers of part-time workers will experience especially harsh treatment as the result of the decision. Such irrational results not only are impermissible, they also contravene the expressed intent of Congress and render Section 5 of the Act unworkable as a whole. The means by which the court of appeals reached its result constitutes an impermissible departure from this Court's directives as to statutory construction. As a result, there is an increased likelihood that the growing number of employers and employees affected by the WARN Act will be unable to resolve any disputes thereunder in an efficient and timely manner when confronted with this issue.

For the foregoing reasons, North Star respectfully requests that this Court grant the instant Petition.

Respectfully submitted,

VINCENT CANDIELLO *
BRIAN P. MURPHY
MORGAN, LEWIS & BOCKIUS
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
(717) 237-4000
Attorneys for Petitioner

* Counsel of Record

APPENDIX

Filed September 14, 1993

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 93-7026 & 93-7056

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

v.

NORTH STAR STEEL COMPANY, INC.,
North Star Steel Company, Inc.
Appellant in No. 93-7026

United Steelworkers of America, AFL-CIO-CLC
Appellant in No. 93-7056

Appeals from the United States District Court
for the Middle District of Pennsylvania

D.C. No. 91-CV-1179

Argued August 12, 1993

BEFORE: SCIRICA, COWEN
and SEITZ, *Circuit Judges.*

(Filed: September 14, 1993)

OPINION OF THE COURT

SEITZ, *Circuit Judge.*

United Steelworkers of America ("plaintiff") brought this action against North Star Steel Company, Inc. ("defendant") alleging violations of the Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §§ 2101-2109. The district court had jurisdiction under 28 U.S.C. § 1331. *See also* 29 U.S.C. § 2104(a)(5). We have jurisdiction under 28 U.S.C. § 1291 over this appeal and cross-appeal from a final judgment of the district court.

I. BACKGROUND

Plaintiff is the exclusive bargaining representative for production and maintenance workers at defendant's plant in Milton, Pennsylvania. Plaintiff brought this action alleging that defendant laid off employees at the Milton plant without providing prior notice as required by WARN. *See* 29 U.S.C. § 2102(a). The district court first granted summary judgment for plaintiff as to defendant's liability after concluding that the layoff was in violation of WARN's requirements. Defendant does not contest its liability on appeal.[1]

Subsequently, the district court also granted summary judgment for plaintiff as to the number of days for which defendant is required to pay damages.[2] On this appeal, defendant argues that the district court erred in interpreting Section 2104(a)(1)(A) of WARN to require that defendant pay damages to each aggrieved employee for

[1] Thus, we need not address *Moore v. Warehouse Club, Inc.*, 992 F.2d 27 (3d Cir. 1993).

[2] After the district court determined the number of days for which defendant was required to pay damages, the parties stipulated to the actual dollar amount of damages for which defendant was liable to each aggrieved employee.

each day of the violation period—whether or not that day would have been a regular workday for that employee. Plaintiff understandably contends that the district court properly interpreted Section 2104(a)(1)(A). We turn to a review of this argument. Our review is plenary. *See Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977).

II. DISCUSSION

A. Interpretation of Section 2104(a)(1)(A)

The sole issue appealed by defendant is the number of days for which it must pay damages to its aggrieved employees under Section 2104(a)(1)(A) of WARN. The district court interpreted that section to require that defendant pay damages for each calendar day within the violation period.[3] Defendant argues that Section 2104(a)(1)(A) does not require it to pay damages to an aggrieved employee for any day within the violation period that would not have been a regular workday for that employee. To our knowledge, this interpretive issue has not yet been decided by any federal court of appeals.[4]

The Supreme Court has stated that "[t]he task of resolving the dispute over the meaning of [a statute] . . . must begin with the language of the statute itself." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Section 2104(a)(1) states in pertinent part:

> (1) Any employer who orders a plant closing or mass layoff in violation of [WARN] shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—
>
> > (A) back pay for each day of the violation at a rate of compensation not less than the higher of—

---

[3] The number of days in the violation period is undisputed.

[4] The United States Court of Appeals for the Fifth Circuit has pending before it a case involving this same issue. *See Carpenters Dist. Council v. Dillard Dept. Stores, Inc.*, Nos. 92-3419 & 92-3613 (argued Aug. 5, 1993).

> (i) the average regular rate received by such employee during the last 3 years of the employee's employment; or
>
> (ii) the final regular rate received by such employee . . .
>
> Such liability shall be calculated for the period of the violation, up to a maximum of 60 days . . .

The district court concluded that this language was unambiguous and that it required a violating employer to pay damages to each aggrieved employee for each calendar day within the violation period—regardless of whether that day would have been a regular workday for the employee (e.g., Saturdays, Sundays and holidays). Defendant counters that this language is ambiguous and that, in light of legislative history, it should be interpreted to require only that damages be paid for each regular workday within the violation period. Defendant further argues that the interpretation of the statute adopted by the district court may produce anomalous results in other cases not presently before us.

We must first determine if the statutory language is clear on its face insofar as our issue is concerned. If so, our inquiry is generally complete and the plain language controls. *See Ron Pair,* 489 U.S. at 241. We turn to that determination.

The statute states that a violating employer is liable to each aggrieved employee for "back pay for each day of the violation." 29 U.S.C. § 2104(a)(1)(A). Both parties focus on a selected portion of this quoted language to support their respective positions. Plaintiff focuses on the phrase "for each day of the violation" in arguing that the statutory language is unambiguous and that defendant must pay damages for each calendar day within the violation period—regardless of whether or not that day would have been a regular workday for the employee. Defendant focuses on the term "back pay" in arguing that the

statutory language is ambiguous. We must examine the parties' interpretive arguments.

Plaintiff argues that a common sense reading of the plain language of Section 2104(a)(1)(A) supports its interpretation that defendant is liable for damages for each calendar day of the violation. As a necessary corollary to its argument, plaintiff takes the position that the term "back pay" is simply a label used to describe the amount of damages for which an employer is liable for each day of the violation.[5]

It is undisputed that the days of the violation period are "calendar days" rather than workdays. *See* 20 C.F.R. § 639.1(a) (1992) ("[WARN] . . . requir[es] employers to provide notification 60 calendar days in advance of plant closings or mass layoffs."); *id.* § 639.5(a) ("[N]otice must be given at least 60 calendar days prior to any planned plant closing or mass layoff . . . ."). In fact, no section of WARN expressly refers to "workdays" (as opposed to calendar days). Thus, under the plain language of the statute, a violating employer is liable for "back pay" for each of the calendar days of the violation.

Defendant argues that the term "back pay," which immediately precedes the phrase "for each day of the violation," renders Section 2104(a)(1)(A) ambiguous. Defendant points out that the use of the term "back pay" in a traditional labor relations context generally connotes a lost earnings concept. Under a lost earnings concept, damages would not be payable for days that would not have been regular workdays for the employees. Thus, defendant asks us to interpret the statute's reference to

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[5] WARN states that the amount of damages for which an employer is liable for each day of the violation is the greater of: (1) "the average regular rate received by such employee during the last 3 years of the employee's employment" or (2) "the final regular rate received by such employee." 29 U.S.C. § 2104(a)(1)(A)(i), (ii).

"back pay for each day of the violation" to mean lost earnings during the period of the violation.

Commonly accepted rules of statutory construction compel us to conclude that the meaning of the term "back pay" in WARN cannot be the lost earnings concept that defendant urges us to embrace. First, we have consistently held that "[c]ourts should avoid a construction of a statute that renders any provision superfluous." *Pennsylvania v. United States Dept. of Health and Human Servs.*, 928 F.2d 1378, 1385 (3d Cir. 1991); *see United States v. Nordic Village, Inc.*, 112 S. Ct. 1011, 1015 (1992) ("[A] statute must, if possible, be construed in such fashion that every word has some operative effect."). Second, "a court should avoid an interpretation of a statute that would lead to absurd or unreasonable results." *Robert T. Winzinger, Inc. v. Management Recruiters, Inc.*, 841 F.2d 497, 500 (3d Cir. 1988).

If "back pay" meant lost earnings, one of the aforementioned rules of statutory construction would necessarily be violated. That is, a section of WARN would be rendered superfluous or application of that section would produce unreasonable results. That section states:

> (2) The amount for which an employer is liable under [Section 2104(a)(1)] shall be reduced by—
>
> (A) any wages paid by the employer to the employee for the period of the violation;
>
> (B) any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation; and
>
> (C) any payment by the employer to a third party or trustee . . . on behalf of and attributable to the employee for the period of the violation.

29 U.S.C. § 2104(a)(2).

If "back pay" meant lost earnings, Section 2104(a)(2) would be superfluous because a lost earnings calculation

would automatically exclude the reductions it sets forth. Thus, there would appear to be no need for the above-quoted language and the rule of statutory construction that requires us to avoid constructions that render statutory provisions superfluous would be violated.

Alternatively, assuming again that "back pay" meant lost earnings, if Section 2104(a)(2) were not superfluous an employer would receive double credit for any of the payments set forth in that section. This double credit would occur because the payments set forth in Section 2104(a)(2) would be subtracted once to compute the "back pay" for which the employer is liable under Section 2104(a)(1) and then would be subtracted a second time because Section 2104(a)(2) mandates that the employer's liability under Section 2104(a)(1) "shall be reduced by" any of the specified payments. If we interpreted this section to permit employers to obtain such a double credit, the rule of statutory construction that requires us to avoid constructions that produce unreasonable results would be violated.

A third commonly accepted rule of statutory construction also supports our conclusion that "back pay" does not mean lost earnings. Namely, a statute's provisions should be read to be consistent with one another, rather than the contrary. *See Coar v. Kazimir,* 990 F.2d 1413, 1419-20 (3d Cir. 1993), *petition for cert. filed,* 62 U.S.L.W 3060 (U.S. Jul. 9, 1993) (No. 93-62); *accord United States v. Tighe,* 551 F.2d 18, 20 (3d Cir.), *cert. denied,* 434 U.S. 823 (1977). An employer who violates WARN is entitled to reduce its liability to its aggrieved employees only by payments within the categories set forth in Section 2104(a)(2) that *it* paid to the aggrieved employees. *See* 29 U.S.C. § 2104(a)(2). If we were to interpret "back pay" to mean lost earnings, the employer would be entitled to reduce its liability by *any* earnings that the employees received during the period of the violation, even if those earnings were received from a different

employer. Thus, there would be a conflict between Subsections 2104(a)(1) and 2104(a)(2)(A).

Defendant's proffered interpretation of the term "back pay" would violate accepted rules of statutory construction. Accordingly, we reject defendant's argument that use of the phrase "back pay" implies a lost earnings concept and, by so doing, renders the statutory language unclear. We conclude instead, as the district court implicitly concluded, that WARN uses the term "back pay" simply as a label to describe the daily rate of damages payable. *See supra* note 5. Because the statutory language is clear, our inquiry is at an end. *See Ron Pair*, 489 U.S. at 241. Our "sole function . . . is to enforce it according to its terms." *Id* (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

We are unpersuaded by defendant's argument that the interpretation we adopt might produce anomalous results in another case not presently before this court.[6] Defendant's argument on this point necessarily assumes that this court would adopt defendant's interpretation of the two statutory provisions that establish the amount of damages

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[6] Defendant bases its anomalous results argument on a hypothetical situation such as the following:

> Assume that an employer violates WARN by laying off employees and that the period of the violation is 60 days. Assume further that aggrieved employee "A" was a full-time employee who worked a regular 8 hour day each weekday (i.e., Monday through Friday). Finally, assume that aggrieved employee "B" was a part-time employee who worked just one 10 hour day each Saturday.

Based on these assumptions, defendant argues that, under the interpretation of Section 2104(a)(1)(A) that we adopt, full-time employee "A" would receive 480 hours' pay (8 hours/day * 60 days) whereas part-time employee "B" would receive 600 hours' pay (10 hours/day * 60 days). Defendant notes that it would be anomalous for a part-time employee to receive 120 hours' pay in excess of that received by a full-time employee. As explained in the text accompanying this footnote, the soundness of defendant's analysis is a matter for another day.

that are to be paid to an aggrieved employee for each day of the violation. *See* 29 U.S.C. §§ 2104(a)(1)(A)(i), (ii). The interpretation of those provisions is not an issue before us on this appeal.[7] Therefore, we express no opinion as to the proper interpretation of Section 2104(a)(1)(A)(i) or Section 2104(a)(1)(A)(ii).

In sum, we conclude that the district court correctly granted summary judgment for plaintiff as to the number of days for which damages are payable.

B. Attorney's Fees

Section 2104(a)(6) of WARN states that, in any action under the statute, "the court, in its discretion, may allow the prevailing party a reasonable attorney's fee . . . ." Plaintiff was the prevailing party in the district court and it filed an unopposed request for attorney's fees. Nevertheless, the district court denied plaintiff's fee request after concluding that defendant had not "litigated in bad faith, vexatiously, or for oppressive reasons." *United Steelworkers of America, AFL-CIO-CLC v. North Star Steel Co.*, 809 F. Supp. 5, 10 (M.D. Pa. 1992).

The bad faith/vexatious standard applied by the district court is the standard that is generally applied when there is not a statutory provision that authorizes the award of attorney's fees. *See, e.g., Mobil Oil Corp. v. Independent Oil Workers Union*, 679 F.2d 299, 305 (3d Cir. 1982) (considering a request for attorney's fees in an action under Section 301 of the Labor Management Relations Act). In its cross-appeal, plaintiff contends that the district court should have applied the standard that is generally applied where, as here, there is a statutory provision that authorizes the award of attorney's fees.

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[7] The briefs in the district court and on appeal indicate that the parties were in apparent agreement as to how these two sections should be interpreted. In any event, the interpretation of these sections was not an issue that was argued in the briefs or at oral argument. In addition, at oral argument, counsel for defendant conceded that we could resolve this case for either party without reaching this anomalous results issue.

We note that the language of WARN's attorney's fee provision is virtually identical to the fee-shifting language in many civil rights statutes. *Compare* 29 U.S.C. § 2104 (a)(6) ("[T]he court, in its discretion, may allow the prevailing party a reasonable attorney's fee . . . .") *with* 42 U.S.C. § 2000e-5(k) ("[T]he court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee . . . ."). The Supreme Court instructs us that "similar language [in fee-shifting statutes] is 'a strong indication' that they are to be interpreted alike." *Independent Fed'n of Flight Attendants v. Zipes,* 491 U.S. 754, 758 n.2 (1989) (quoting *Northcross v. Memphis Bd. of Educ.,* 412 U.S. 427, 428 (1973)). The Supreme Court also instructs that, where, as here, the fee-shifting statute authorizes an award of attorney's fees to a "prevailing plaintiff," that party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983).

In light of the Supreme Court precedent in this area, we conclude the district court erred in applying the bad faith/vexatious standard to an action under WARN. Accordingly, we will vacate the district court's order to the extent that it denies plaintiff's request for atorney's fees and will remand this issue for resolution by the district court based on the standard announced by the Supreme Court.

III. CONCLUSION

The order of the district court will be affirmed to the extent that it requires defendant to pay the agreed amount of damages for each day of the violation. We will vacate the district court's order to the extent that it denies plaintiff's request for attorney's fees and remand that claim for further proceedings consistent with this opinion.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 93-7026 & 93-7056

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

v.

NORTH STAR STEEL COMPANY, INC.,
North Star Steel Company, Inc.
Appellant in No. 93-7026

United Steelworkers of America, AFL-CIO-CLC
Appellant in No. 93-7056

Appeals from the United States District Court
for the Middle District of Pennsylvania

D.C. No. 91-CV-1179

Present: Scirica, Cowen and Seitz, *Circuit Judges*

AMENDED JUDGMENT

This cause came to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on August 12, 1993.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered December 11, 1992, be, and the same is hereby affirmed to the extent that it requires North Star Steel Company, Inc. to pay the agreed amount of damages for each day of the violation. The order is vacated to the extent that it denied the United Steelworkers of America's request for attorneys fees. The claim for attorney's fees is remanded to the District Court for further proceedings consistent with the opinion of this Court. All of the above in accordance with the opinion of this Court. Costs taxed in favor of United Steelworkers of America, AFL-CIO-CLC.

ATTEST:

/s/ P. Douglas Sisk
Clerk

Dated: September 14, 1993

Certified as a true copy and issued in lieu of a formal mandate on October 6, 1993.

Teste: /s/ P. Douglas Sisk
Clerk
U.S. Court of Appeals for the Third Circuit.

Pursuant to Rule 39(d), Fed. R. App. P., Corrected costs taxed in favor of United Steelworkers of America, AFL-CIO-CLC added hereto on October 25, 1993 as follows:

Total for Brief	$131.04
Total for filing fee	105.00
Total	$236.04

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 93-7026 & 93-7056

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC
v.

NORTH STAR STEEL COMPANY, INC.,
North Star Steel Company, Inc.
Appellant in No. 93-7026

United Steelworkers of America, AFL-CIO-CLC
Appellant in No. 93-7056

Appeals from the United States District Court
for the Middle District of Pennsylvania

D.C. No. 91-CV-1179

Present: Scirica, Cowen and Seitz, *Circuit Judges*

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on August 12, 1993.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered December 11, 1992, be, and the same is hereby affirmed to the extent that it requires North Star Steel Company, Inc. to pay the agreed amount of damages for each day of the violation. The order is vacated to the extent that it denied the United Steelworkers of America's request for attorneys fees. The claim for attorney's fees is remanded to the District Court for further proceedings consistent with the opinion of this Court. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ P. Douglas Sisk
Clerk

Dated: September 14, 1993

Certified as a true copy and issued in lieu of a formal mandate on October 6, 1993.

Teste: /s/ P. Douglas Sisk
Clerk
U.S. Court of Appeals for the Third Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

No. 4: CV-91-1179

JUDGE MUIR

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Plaintiff,

v.

NORTH STAR STEEL COMPANY, INC.,
Defendant.

ORDER

AND NOW, this 26th day of January, 1993, the Court ORDERS, ADJUDGES, and DECREES the following:

1. North Star Steel Company ("North Star") shall pay to each individual listed on the Exhibit attached hereto the amounts designated by each individual's name (minus normally allowed deductions for the wage portion of said amounts).

2. North Star shall credit and calculate the pension service and benefits of each individual listed on the Exhibit attached hereto with 480 hours of additional service for all purposes under the North Star sponsored pension plan covering each individual.

/s/ Muir
MUIR
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

No. 4: CV-91-1179

JUDGE MUIR

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Plaintiff,

v.

NORTH STAR STEEL COMPANY, INC.,
Defendant.

STIPULATION AND PROPOSED ORDER

By Order of this Court dated December 11, 1992, counsel for the parties were ordered to confer and attempt in good faith to agree upon and a file a form of proposed order consistent with the prior Orders and stipulations entered in this matter. Pursuant to said December 11, 1992 Order, the parties were to jointly file a form of proposed order within 30 days, if they had agreed on the substance of such an order. If they had not, the order required plaintiff to file its proposed order ten days hence, i.e., by January 20, 1993. Thirty days subsequent to the Court's December 11, 1992 Order, the parties had not come to agreement, but subsquently have, and therefore submit the attached proposed order for consideration by this Court.

Respectfully submitted,

/s/ Vincent Candiello
VINCENT CANDIELLO
Morgan, Lewis & Bockius
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101
(717) 237-4014
Counsel for defendant

/s/ David Goldman
DAVID GOLDMAN
Assistant General Counsel
United Steelworkers
Five Gateway Center
Pittsburgh, PA 15222
(412) 562-2533
Counsel for plaintiff

EXHIBIT

EE #	Name	Gross Wage Payment $ Rate	x Hrs	Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
151	Aikey, Harold L.	10.895	480		5229.60	238.10		5467.70	947.33	6415.03
257	Aikey, Rodney W.	9.815	480		4711.20	247.52		4958.72	859.15	5817.87
092	Albright, Dale E.	10.055	480		4826.40	247.52		5073.92	879.11	5953.03
066	Aunkst, Marvin E.	11.615	480		5575.20	92.96		5668.16	982.07	6650.23
232	Aunkst, Terry E.	9.935	480		4768.80	247.52		5016.32	869.13	5885.45
091	Austinson, Duane	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
212	Baker, Ralph E.	9.575	480		4596.00	168.76		4764.75	825.54	5590.30
053	Bankes, Darrell E.	11.615	480		5575.20	92.96		5668.16	982.07	6650.23
085	Bardole, Raymond B.	9.215	480		4423.20	238.10		4661.30	807.62	5468.92
129	Barnhill, Frank W. Jr.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
242	Bennage, Richard L.	10.535	480		5056.80	226.07		5282.87	915.31	6198.18
106	Bieber, Willard F.	10.895	480		5229.60	247.52		5477.12	948.97	6426.09
269	Bingaman, Marlin E.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
496	Bowring, Roger W.	10.175	480		4884.00	247.52		5131.52	889.09	6020.61
460	Breon, Edward E.	9.575	480		4596.00	86.95		4682.95	811.37	5494.32
095	Brosious, James E.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
220	Brosius, Robert L.	9.935	480		4768.80	180.79		4949.53	857.57	5807.16
477	Brown, Douglas E.	10.655	480		5114.40	92.96		5207.36	902.23	6109.59
140	Bucher, Scott A.	11.015	480		5287.20	92.96		5380.16	932.17	6312.33
464	Bunge, Jonathan	10.655	480		5114.40	238.10		5352.50	927.37	6279.87
461	Burgess, Alan J.	9.695	480		4653.60	247.52		4901.12	849.17	5750.29
239	Burrell, Ralph C.	9.935	480		4768.80	247.52		5016.32	869.13	5885.45
516	Russ, Ricky L.	9.575	480		4596.00	226.07		4822.07	835.47	5657.54
474	Chappell, Robert	10.535	480		5056.80	92.96		5149.76	892.25	6042.01
490	Condon, Nathan K.	10.055	480		4826.40	247.52		5073.92	879.11	5953.03

EE #	Name	Gross Wage Payment $ Rate	x Hrs	Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
504	Crawford, Roy	10.415	480		4999.20	226.07		5225.27	905.33	6130.60
155	Curran, Forrest J.	10.895	480		5229.60	247.52		5477.12	948.97	6426.09
166	Dauberman, Allen C.	10.655	480		5114.40	238.10		5352.50	927.37	6279.87
453	Dehart, Andrew M.	10.175	480		4884.00	247.52		5131.52	889.09	6020.61
278	Dehart, William M.	9.935	480		4768.80	247.52		5016.32	869.13	5885.45
210	Deibler, Walter P.	9.935	480		4768.80	247.52		5016.32	869.13	5885.45
234	Delsite, Robert L.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
150	Derr, Albert E.	11.375	480		5460.00	247.52		5707.52	988.88	6696.40
024	Derr, H. James	11.615	480		5575.20	238.10		5813.30	007.21	6820.51
203	Derr, Ronald S.	10.535	480		5056.80	238.10		5294.90	917.39	6212.29
052	Derr, William E.	10.415	480		4999.20	238.10		5237.30	907.41	6144.71
120	Diehl, Harold L.	10.655	480		5114.40	238.10		5352.50	927.37	6279.87
198	Diehl, James O.	9.935	480		4768.80	238.10		5006.90	867.50	5874.40
107	Dimm, John F.	9.455	480		4538.40	247.52		4785.92	829.21	5615.13
201	Dotts, David W.	10.655	480		5114.40	92.96		5207.36	902.23	6109.59
237	Dotts, Samuel E.	9.575	480		4596.00	247.52		4843.52	839.10	5682.71
458	Edwards, Dean L. Jr.	10.655	480		5114.40	92.96		5207.36	902.23	6109.59
075	Emerick, Richard C.	10.655	480		5114.40	180.79		5295.19	917.44	6212.63
056	Emery, Raymond B.	10.895	480		5229.60	180.79		5410.39	937.40	6347.79
199	Engelman, Richard K.	9.935	480		4768.80	247.52	42.41	5058.73	876.47	5935.20
494	Erb, Thomas R.	10.175	480		4884.00	86.95		4970.95	861.27	5832.22
065	Eschbach, Abraham L.	10.415	480	—169.84	4829.36	180.79		5010.15	868.06	5878.21
488	Facer, Robert H. II	10.415	480		4999.20	92.96		5092.16	882.27	5974.43
832	Farringer, Douglas D.	9.815	480		4711.20	226.07		4937.27	855.43	5792.70
475	Fisher, Robb B.	10.655	480		5114.40	238.10		5352.50	927.37	6279.87
123	Franquet, Dale K.	9.575	480		4596.00	247.52		4843.52	839.19	5682.71

119	Frederick, Charles W. Jr.	10.655	480	5114.40	238.10		5352.50	927.37	6279.87
481	Gardner, Issac K.	11.135	480	5344.80	247.52		5592.32	968.93	6561.25
083	Geiswite, John A.	11.015	480	5287.20	238.10		5525.30	957.31	6482.61
243	Gilbert, Jess R.	11.615	480	5575.20	247.52	100.00	5922.72	1026.17	6948.89
081	Ginck, Ronald C.	10.655	480	5114.40	238.10		5352.50	927.37	6279.87
100	Girton, Carl A.	10.655	480	5114.40	238.10		5352.50	927.37	6279.87
284	Grego, Ronald V. Jr.	10.775	480	5172.00	247.52		5419.52	938.99	6358.51
118	Griffin, Richard W.	9.815	480	4711.20	238.10		4949.30	857.52	5806.82
060	Guffey, Russell L.	12.116	480	5815.68	238.10		6053.78	1048.88	7102.66
326	Guffey, Tracy W.	10.295	480	4941.60	316.10		5257.70	910.95	6168.65
219	Gundrum, Norman R.	11.255	480	5402.40	247.52		5649.92	978.91	6628.83
044	Gundrum, Norman T.	9.575	480	4596.00	180.79		4776.79	827.63	5604.42
023	Haas, Roger W.	10.055	480	4826.40	180.79		5007.19	867.55	5874.74
013	Hackenburg, L.	9.455	480	4538.40	86.95		4625.35	801.39	5426.74
503	Hamilton, Edward A.	10.415	480	4999.20	238.10		5237.30	907.41	6144.71
274	Hans, Charles E. Sr.	9.455	480	4538.40	247.52		4785.92	829.21	5615.13
523	Hans, Michael L.	9.455	480	4538.40	226.07		4764.47	825.49	5589.96
059	Hans, Robert D.	11.135	480	5344.80	238.10		5582.90	967.29	6550.19
022	Harmon, Daniel W.	11.615	480	5575.20	238.10		5813.30	1007.21	6820.51
223	Harpster, Dennis R.	10.655	480	5114.40	316.10		5430.50	940.89	6371.39
161	Harris, Vincent M. Jr.	9.815	480	4711.20	92.96		4804.16	832.37	5636.53
249	Hassenplug, Gary W.	10.775	480	5172.00	N/A		5172.00	896.10	6068.10
080	Hauck, George L.	11.615	480	5575.20	92.96		5668.16	982.06	6650.22
510	Heddings, Jeffrey L.	9.455	480	4538.40	92.96		4631.36	802.43	5433.79
132	Heimbach, Harvey	9.695	480	4653.60	180.79		4834.39	837.61	5672.00
188	Heins, James A.	9.695	480	4653.60	247.52		4901.12	849.17	5750.29
328	Hendricks, Richard L.	11.295	480	5421.60	238.10		5659.70	980.60	6640.30
090	Hendricks, Richard O.	10.655	480	5114.40	86.95		5201.35	901.19	6102.54
253	Hicks, Stephen R.	10.775	480	5172.00	92.96		5264.96	912.21	6177.17

EE #	Name	Gross Wage Payment $ Rate x Hrs		Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
174	Hoey, Jon K.	9.695	480		4653.60	247.52		4901.12	849.17	5750.29
165	Hollenbach, Rocky A.	9.935	480	—84.45	4684.35	92.96		4777.31	827.72	5605.03
126	Hoover, Harold H. Jr.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
341	Horsfield, Keith A.	10.415	480		4999.20	247.52		5246.72	909.05	6155.77
293	Houtz, Glenwood	10.295	480		4941.60	238.10		5179.70	897.43	6077.13
273	Huff, Dennis J.	10.295	480		4941.60	247.52		5189.12	899.07	6088.19
189	Huff, Richard R.	11.015	480		5287.20	238.10		5525.30	957.31	6482.61
179	Imbrongno, Donald E.	11.135	480		5344.80	247.52		5592.32	968.93	6561.25
231	Johnson, Harry S. III	10.895	480		5229.60	247.52		5477.12	948.77	6426.09
154	Keefer, Delmar II	10.535	480		5056.80	247.52		5304.32	919.03	6223.35
211	Keefer, Kenneth	9.575	480		4596.00	247.52		4843.52	839.19	5682.71
084	Kerstetter, Dale R.	11.015	480		5287.20	238.10		5525.30	957.31	6482.61
156	Kerstetter, Ralph D.	10.775	480		5172.00	247.52		5419.52	938.99	6358.51
295	Kerstetter, Ronald E.	10.415	480		4999.20	226.07		5225.27	905.33	6130.60
238	Kline, Rollin B.	10.535	480		5056.80	238.10		5294.90	917.39	6212.29
521	Klopp, Shennon M.	9.455	480		4538.40	226.07		4764.47	825.49	5589.96
259	Koschoff, William C. Jr.	10.895	480		5229.60	92.96		5322.56	922.18	6244.74
017	Kratzer, J.	10.775	480	—1978.5	3193.50	92.96		3286.46	569.41	3855.87
183	Krepshaw, Chester J.	10.655	480		5114.40	247.52		5361.92	929.01	6290.93
133	Lepley, Junior A.	9.455	480		4538.40	238.10		4776.50	827.58	5604.08
300	Libby, Gary C.	10.895	480		5229.60	247.52		5477.12	948.97	6426.09
192	Linn, Galen L.	12.116	480		5815.68	247.52		6063.20	1050.51	7113.71
141	Linn, William G.	10.055	480		4826.40	306.68		5133.08	889.36	6022.44
508	Litzelman, Sidney F.	10.415	480		4999.20	92.96		5092.16	882.27	5974.43
484	Lloyd, Charles G.	9.455	480		4538.40	247.52		4785.92	829.21	5615.13
194	Ludwig, Bruce H.	11.615	480		5575.20	238.10		5813.30	1007.21	6820.51

452	Lukens, Rodney R.	9.695	480	4653.60	92.96		4746.56	822.39	5568.95
230	Lynn, Howard T.	10.535	480	5056.80	180.79		5237.59	907.46	6145.05
173	Machesic, Gary R.	10.895	480	5229.60	247.52	36.80	5513.92	955.34	6469.26
035	Marks, Thomas H.	10.295	480	4941.60	226.07		5167.67	895.35	6063.02
117	Marks, Van L.	11.615	480	5575.20	238.10		5813.30	1007.21	6820.51
467	McKinley, Samuel	11.135	480	5344.80	247.52		5592.32	968.93	6561.25
517	Mertz, Deane M.	9.455	480	4538.40	86.95		4625.35	801.39	5426.74
033	Miller, David E.	10.775	480	5172.00	316.10		5488.10	950.87	6438.97
250	Miller, Harold J. Jr.	10.415	480	4999.20	247.52		5246.72	909.05	6155.77
187	Miller, Randy L.	12.776	480	6132.48	247.52		6380.00	1105.40	7485.40
287	Millett, Judith	10.775	480	5172.00	238.10		5410.10	937.35	6347.45
482	Monk, George T.	10.415	480	4999.20	226.07	68.59	5293.86	917.21	6211.07
101	Moore, Allen C.	10.415	480	4999.20	247.52		5246.72	909.05	6155.77
519	Moore, Nick W.	10.415	480	4999.20	238.10		5237.30	907.41	6144.71
186	Mosteller, Glenn A.	11.015	480	5287.20	238.10		5525.30	957.31	6482.61
025	Moyer, J.	10.775	480	5172.00	92.96		5264.96	912.21	6177.17
271	Munson, James R.	10.295	480	4941.60	N/A		4941.60	856.18	5797.78
096	Nace, David F.	11.255	480	5402.40	N/A		5402.40	936.02	6338.42
097	Napp, Mardean R.	10.415	480	4999.20	247.52		5246.72	909.05	6155.77
241	Neidig, Richard A.	10.535	480	5056.80	247.52		5304.32	919.03	6223.35
131	Neitz, Martin W.	10.895	480	5229.60	238.10		5467.70	947.33	6415.03
312	Newton, Stephen R.	10.415	480	4999.20	N/A		4999.20	866.16	5895.36
277	Notarangelo, Donald	9.935	480	4768.80	316.10		5084.90	881.01	5965.91
197	Nye, Carey W.	10.535	480	5056.80	316.10		5372.90	930.90	6303.80
147	Paul, James A.	10.535	480	5056.80	247.52	71.55	5375.87	931.42	6307.29
112	Pfleegor, Dyson G.	11.375	480	5460.00	247.52		5707.52	988.88	6696.40
088	Pfleegor, John E.	11.135	480	5344.80	238.10		5592.32	968.93	6561.25
245	Procopio, Ronald R.	10.535	480	5056.80	247.52		5304.32	919.03	6223.35
455	Pronkoski, Jay L.	9.575	480	4596.00	247.52		4843.52	839.19	5682.71

EE #	Name	Gross Wage Payment $ Rate x Hrs	Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
263	Prowant, John J. Jr.	9.935 480		4768.80	247.52	64.00	5080.32	880.22	5960.54
515	Pudula, Mark J. Jr.	10.055 480		4826.40	226.07		5052.47	875.39	5927.86
159	Ranck, Vonada W.	10.535 480		5056.80	247.52		5304.32	919.03	6223.35
046	Rathmell, Roy L.	11.015 480		5287.20	238.10		5525.30	957.31	6482.61
019	Reeder, Lawrence G.	11.615 480	—858.92	4716.28	238.10		4954.38	858.40	5812.78
465	Reeves, Spencer	10.655 480		5114.40	247.52		5361.92	929.01	6290.93
495	Reeves, Thomas P.	10.175 480		4884.00	86.95		4970.95	861.27	5832.22
315	Reich, Thomas E.	9.695 480		4653.60	226.07		4879.67	845.45	5725.12
240	Reitz, George P.	9.815 480		4711.20	238.10		4949.30	857.52	5806.82
218	Renn, Steven P.	10.775 480		5172.00	247.52		5419.52	938.99	6358.51
500	Rider, Randy L.	10.655 480		5114.40	226.07		5340.47	925.29	6265.76
520	Riehl, Robert L. Jr.	9.455 480		4538.40	226.07		4764.47	825.49	5589.96
031	Roma, Rocco J.	10.775 480		5172.00	238.10		5410.10	937.35	6347.45
501	Ross, Gregory T.	10.895 480		5229.60	226.07		5445.67	943.52	6389.19
181	Rovenolt, E. Wayne	10.775 480		5172.00	247.52		5419.52	938.99	6358.51
070	Rovenolt, Milford L.	10.055 480		4826.40	238.10		5064.50	877.48	5941.98
479	Ruch, Joel A.	11.135 480		5344.80	247.52		5592.32	968.93	6561.25
063	Ruch, Raymond C.	12.512 480		6005.76	226.07		6231.83	1079.73	7311.56
513	Ruk, Martin J.	10.895 480		5229.60	238.10		5467.70	947.33	6415.03
524	Rummell, Keith A.	10.415 480		4999.20	247.52		5246.72	909.05	6155.77
286	Russell, Daisy	10.055 480		4826.40	247.52		5073.92	879.11	5953.03
246	Russell, James F.	11.135 480		5344.80	247.52		5592.32	968.93	6561.25
279	Rutkowskie, Anthony	9.935 480		4768.80	92.96		4861.76	842.34	5704.10
498	Saar, Thomas A.	10.415 480		4999.20	226.07		5225.27	905.33	6130.60
511	Salter, Alec W.	10.535 480		5056.80	247.52		5304.32	919.03	6223.35
078	Sampsell, Allan W.	10.535 480		5056.80	180.79		5237.59	907.46	6145.05

340	Sarver, Joseph W.	10.895	480	5229.60	92.96	5322.56	922.19	6244.75
171	Sauers, Roger L.	10.895	480	5229.60	247.52	5477.12	948.97	6426.09
139	Schick, John W.	9.695	480	4653.60	180.79	4834.39	837.61	5672.00
252	Scholl, Gregory A.	10.775	480	5172.00	247.52	5419.52	938.99	6358.51
318	Sechler, Dale E.	9.575	480	4596.00	247.52	4843.52	839.19	5682.71
476	Secules, Richard D.	10.655	480	5114.40	316.10	5430.50	940.89	6371.39
502	Sellard, Hugh A.	10.895	480	5229.60	238.10	5467.70	947.33	6415.03
142	Sellard, Raymond G.	10.655	480	5114.40	238.10	5352.50	927.37	6279.87
342	Sherwood, Matthew J.	11.255	480	5402.40	247.52	5649.92	978.91	6628.83
235	Shelter, Lawrence L.	9.575	480	4596.00	238.10	4834.10	837.56	5671.66
128	Shreck, Elmer E. Jr.	10.415	480	4999.20	238.10	5237.30	907.41	6144.71
525	Silliman, Michael A.	10.175	480	4884.00	92.96	4976.96	862.31	5839.27
260	Simpson, David K.	10.415	480	4999.20	238.10	5237.30	907.41	6144.71
093	Smith, Dale O.	11.015	480	5287.20	247.52	5534.72	958.95	6493.67
213	Smith, Gaylord L.	9.455	480	4538.40	247.52	4785.92	829.21	5615.13
470	Smith, Stephen	11.135	480	5344.80	247.52	5592.32	968.93	6561.25
167	Smith, William H.	11.375	480	5460.00	247.52	5707.52	988.88	6696.40
051	Snyder, Carl G.	11.615	480	5575.20	316.10	5891.30	1020.73	6912.03
169	Snyder, Kenneth E.	10.895	480	5229.60	247.52	5477.12	948.97	6426.09
327	Snyder, Michael L.	10.175	480	4884.00	86.95	4970.95	861.27	5832.22
215	Solomon, E.	10.775	480	5172.00	92.96	5264.96	912.21	6177.17
506	Solomon, Scott D.	10.415	480	4999.20	86.95	5086.15	881.23	5967.38
456	Stahl, Chad A.	10.895	480	5229.60	238.10	5467.70	947.33	6415.03
410	Stiffler, Therman A.	10.175	480	4884.00	247.52	5131.52	889.09	6020.61
258	Styers, Joseph A.	10.655	480	5114.40	316.10	5430.50	940.89	6371.39
032	Swanson, Philip E.	10.415	480	4999.20	238.10	5237.30	907.41	6144.71
073	Taylor, Robert H.	11.615	480	5575.20	92.96	5668.16	982.07	6650.23
148	Taylor, Thomas L.	10.535	480	5056.80	247.52	5304.32	919.03	6223.35
109	Thomas, Eugene R.	10.775	480	5172.00	238.10	5410.10	937.35	6347.45

EE #	Name	Gross Wage Payment $ Rate x Hrs	Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
202	Threet, Ricky D.	9.935 480		4768.80	316.10		5084.90	881.01	5965.91
471	Tompkins, Drew	10.535 480		5056.80	238.10		5294.90	917.39	6212.29
320	Torre, Gerald	9.455 480		4538.40	180.79		4719.19	817.65	5536.84
204	Trate, Mikel J.	10.415 480		4999.20	247.52		5246.72	909.05	6155.77
143	Troupe, Henry C.	10.895 480		5229.60	238.10		5467.70	947.33	6415.03
168	Troxell, James E. Jr.	10.775 480		5172.00	247.52		5419.52	938.99	6358.51
208	Troxell, Lester J.	9.455 480		4538.40	92.96		4631.36	802.43	5433.79
247	Troxell, Rickie L.	10.055 480		4826.40	247.52		5073.92	879.11	5953.03
082	Troxell, Robert E.	10.535 480		5056.80	238.10		5294.90	917.39	6212.29
485	Tyson, Scott A.	10.415 480		4999.20	247.52		5246.72	909.05	6155.77
190	Ulp, Dennis A.	10.895 480		5229.60	238.10		5467.70	947.33	6415.03
451	Vandergriff, John	10.895 480		5229.50	92.96		5322.46	922.17	6244.63
499	Vansicle, Brandt S.	10.055 480		4826.40	92.96		4919.36	852.33	5771.69
472	Voggenreiter, David	10.775 480		5172.00	92.96		5264.96	912.21	6177.17
164	Wagner, Kermit P.	9.935 480		4768.80	238.10		5006.90	867.50	5874.40
184	Wagner, Larry J.	11.015 480		5287.20	247.52		5534.72	958.95	6493.67
071	Wagner, William R.	11.375 480		5460.00	92.96		5552.96	962.10	6515.06
526	Walker, Christopher J.	9.575 480		4596.00	84.73		4680.73	810.98	5491.71
104	Walter, Alvin L.	11.015 480		5287.20	247.52		5534.72	958.95	6493.67
493	Waltman, Shawn W.	9.695 480		4653.60	226.07		4879.67	845.45	5725.12
045	Waughen, Ceril A.	9.935 480		4768.80	180.79		4949.59	857.57	5807.16
144	Webb, Allen J.	11.615 480		5575.20	247.52		5822.72	1008.84	6831.56
222	Weir, Bruce F.	9.935 480		4768.80	247.52		5016.32	869.13	5885.45
280	Welliver, Edward E.	10.535 480		5056.80	247.52		5304.32	919.03	6223.35
105	Wenrich, Philip C.	10.655 480		5114.40	238.10		5352.50	927.37	6279.87
158	Wert, Thomas L.	10.895 480		5229.60	247.52		5477.12	948.97	6426.09

098	Wetzel, Charles L.	11.615	480		5575.20	247.52	5822.72	1008.84	6831.56
262	Wintersteen, Dale K.	10.775	480		5172.00	238.10	5410.10	937.35	6347.45
290	Witmer, Eugene L. Jr.	11.135	480		5344.80	247.52	5592.32	968.93	6561.25
206	Wolfe, Edwin C.	10.775	480		5172.00	247.52	5419.52	938.99	6358.51
015	Woolsey, Maurice D.	9.815	480	—2067.95	2643.25	238.10	2881.35	499.22	3380.57
114	Yarger, Donald E.	10.775	480		5172.00	247.52	5419.52	938.99	6358.51
127	Yost, Jack R.	10.535	480		5056.80	316.10	5372.90	930.90	6303.80
508	Young, Raymond E.	10.895	480		5229.60	247.52	5477.12	948.97	6426.09
518	Young, Raymond E.	9.815	480		4711.20	247.52	4958.72	859.15	5817.87
492	Zerbe, Steven P.	10.895	480		5229.60	247.52	5477.12	948.97	6426.09
039	Zettlemoyher, H.	10.775	480		5172.00	92.96	5264.96	912.21	6177.17
307	Zook, Darwin L. III	10.895	480		5229.60	247.52	5477.12	948.97	6426.09

EE #	Name	Gross Wage Payment $ Rate x Hrs	Offset	Wage	Premiums	Med. Exp.	Sub-total	Interest (1.17326%)	Total
079	Baylor, Ralph D.	9.695 480		4653.60	103.70		4757.30	824.25	5581.55
069	Bunch, Lloyd L.	9.455 480		4538.40	42.07		4580.47	793.61	5374.08
074	Delsite, William L.	10.775 480		5172.00	147.41		5319.41	921.64	6241.05
030	Fisher, George R.	10.415 480		4999.20	203.83		5203.03	901.48	6104.51
055	Groover, William H.	9.695 480		4653.60	73.70		4727.30	819.05	5546.35
077	Hackenberg, William C.	9.695 480		4653.60	276.05		4929.65	854.11	5783.76
048	Herr, Louis A.	9.455 480		4538.40	16.83		4555.23	789.24	5344.47
111	Hollenbach, Gary E.	9.815 480		4711.20	104.72		4815.92	834.41	5650.33
037	Pfleegor, William H. Jr.	9.455 480		4538.40	N/A		4538.40	786.32	5324.72
195	Radel, Daniel R.	9.815 480		4711.20	203.83		4915.03	851.58	5766.61
113	Walter, Charles E. Jr.	9.455 480		4538.40	276.05		4814.45	834.15	5648.60
038	Walter, Meredith L.	10.655 480		5114.40	141.80		5256.20	910.69	6166.89
288	Yarish, Carol R.	9.455 480		4538.40	230.32		4768.72	826.23	5594.95

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 4:CV-91-1179

Complaint Filed 9/9/91

(Judge Muir)

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Plaintiff

vs.

NORTH STAR STEEL COMPANY, INC.,
Defendant

ORDER

December 11, 1992

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 9, 1991, the United Steelworkers of America, AFL-CIO•CLC (hereafter "Union") filed this action pursuant to the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101 *et seq.* In its complaint the Union alleged that North Star Steel Company (hereafter "North Star") violated that Act when North Star failed to give the Union or its members at least 60 days advance notice prior to laying off approximately 270 of its employees on February 25, 1991. North Star ceased production on that date.

The Union is the exclusive collective bargaining representative of approximately 250 production and main-

tenance workers who had been employed at North Star's plant located in Milton, Pennsylvania. North Star produced hot rolled steel bars and other steel products at that facility and employed a total of approximately 310 people.

On February 24, 1992, the Union filed a motion for summary judgment supported by admissions of North Star and by affidavits of Union members who had been employed by North Star. In its response to that motion, North Star conceded that its actions constituted a "technical" violation of § 2102(a) of the Worker Adjustment and Retraining Notification Act. By order dated April 9, 1992, we granted the Union's motion for summary judgment and instructed the Clerk to enter judgment in favor of the Union on the issue of liability.

Presently before the Court is the Union's motion for summary judgment on damages. That motion, a brief in support, and a so-called "supplemental" affidavit were filed on September 30, 1992. After receiving two extensions of time within which to file its brief in opposition to the Union's motion, North Star timely filed its brief on October 30, 1992. The Union also received two extensions of time to file a reply and one was punctually filed on December 4, 1992. The matter is now ripe for disposition.

The standard for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is well settled. Summary judgment is appropriate only when there is no genuine issue of material fact which is unresolved and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P.56(c). The United States Supreme Court has stated that in motions for summary judgment a material fact is one which might affect the outcome of the suit under relevant substantive law. *See* Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Initially, the moving party has a burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The

non-moving party then must make a sufficient showing as to the essential elements of his or her case that a reasonable jury could find in his or her favor. Id. at 322-23. We will apply that standard to the Union's motion for summary judgment on damages.

With respect to damages, the Worker Adjustment and Retraining Notification Act states that an employer who fails to provide written notice 60 days in advance of a plant closing or a mass layoff

> shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for
>
> > (A) back pay for each day of violation at a rate of compensation not less than the higher of—
> >
> > > (i) the average regular rate received by such employee during the last three years of the employee's employment; or
> > >
> > > (ii) the final regular rate received by such employee; and
> >
> > (B) benefits under an employee benefit plan described in section 1002(3) of this title, including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan had the employment loss not occurred.
>
> Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.

29 U.S.C. § 2104(a).

On July 31, 1992, the parties filed a stipulation of facts and of agreements. In that stipulation the parties classify every North Star employee represented by the Union into

one of three groups. The first category, entitled "Group A" by the parties, consists of individuals who were laid off on February 25, 1991. The second category, entitled "Group B" by the parties, is comprised of individuals who were laid off between February 25, 1991, and June 3, 1991. The third category of employees, entitled "Group C" by the parties, is made up of individuals who were not available for work between February 25, 1991, and June 3, 1991. The Union concedes that those in Group C are not entitled to damages in this action.

The first issue we must address is whether the number of days to be used in calculating the damages for individuals in Groups A and B is the number of calendar days or the number of working days that North Star failed to provide advance notice of the layoff. The Union asserts that each of its members in those two Groups is entitled to the wage rate to which the parties have stipulated for each employee for 60 eight-hour days because that is the number of days that North Star failed to provide notice. North Star argues that each employee's hourly wage rate should be multiplied by only 44 eight-hour days because that is the number of working days encompassed by the 60-day period of North Star's violation of the Worker Adjustment and Retraining Notification Act.

In our view the statutory language at issue in this case is clear. Section 2104(a)(1) states that the employer's liability shall be, *inter alia,* "back pay for each day of violation" up to a maximum of 60 days. North Star violated the Worker Adjustment and Retraining Notification Act when it failed to provide advance notice of the February 25, 1991, layoff. Each day that North Star failed to notify its employees of that layoff in advance of February 25, 1991, is a "day of violation." Nothing in the statute suggests that the Act is violated only on the weekdays that an employer fails to provide notice.

The only other court that has addressed the issue of which we are aware reached the same conclusion. Car-

penters Dist. Council v. Dillard Dep't Stores, 778 F. Supp. 297 (E.D. La. 1991).

The next issue is whether the employees in Group B, who were laid off more than 30 days after February 25, 1991, are entitled to damages in this action. North Star initially argues that we may not resolve this issue on summary judgment because there are material facts in dispute in that each employee's circumstances in Group B are unique. We are of the view that while factual differences may exist among those in Group B, we are still able to dispose of the present motion because none of those differences is material.

North Star argues that no employee laid off more than 30 days after February 25, 1991, is entitled to damages in this action. The Worker Adjustment and Retraining Notification Act provides no basis for that argument.

The statute requires an employer to serve written notice of a mass layoff either to the employees "who may reasonably be expected to experience an employment loss as a consequence of a . . . mass layoff by their employer," or to such employees' representative. 29 U.S.C. §§ 2101 (a)(5) and 2102(a). It is undeniable that when North Star laid off the overwhelming majority of its employees and ceased all production on Febraury 25, 1991, all of its employees in production-related activities may reasonably have been expected to experience an employment loss.

Furthermore, the statute imposes liability on the employer who fails to provide notice to each

> employee who has worked for the employer during the plant closing or mass layoff and who, as a result of the failure by the employer to comply with section 2102 of this title did not receive timely notice either directly or through his or her representative as required by section 2102 of this title.

29 U.S.C. § 2104(a)(5). North Star admits that it never provided any notice.

Those are the only provisions addressing the scope of the employer's liability for failing to provide notice. Not one of those provisions contains language limiting liability based on the date that an employee was laid off. North Star is liable to all the individuals listed in Groups A and B. Moreover, North Star is liable to those employees for the maximum period in the statute because it never provided advance written notice to any employee or any employee representative.

We next address amounts which North Star argues should be deducted from its liability. The first amount is comprised of the wages earned by seven employees who were recalled to work between February 25, 1991, and April 25, 1991. The names of those employees are listed in the affidavit of Harold Olden. The statute provides for the offset of such amounts and the Union concedes that the wages earned by those seven employees should be deducted.

North Star next argues that it is not liable to the employees named in Group C because they were not available for work during the period of violation. The Union agrees.

The final offsets sought by North Star concern workmen's compensation payments, wages paid for work performed on the morning of February 25, 1991, to all employees laid off, and wages paid after February 25, 1991, to all the employees named in Group B. With respect to workmen's compensation, North Star is not entiled to offset those payments because they are not listed in the statute's apparently exhaustive list of excludable amounts. *See* 29 U.S.C. § 2104(a)(2).

With respect to wages paid on the morning of February 25, 1992, those amounts are not deductible because they were not paid during the period of North Star's violation of the Act. An employer may only deduct from its liability amounts paid during the period of its violation. 29 U.S.C. § 2104(a)(2)(A).

North Star's last theory is that it should be allowed to offset its liability based on wages paid to those named in Group B because they had constructive notice of their impending layoff via the February 25, 1991, layoff. In that argument North Star appears to equate constructive notice with the advanced *written* notice required in the statute. We are of the view that only written notice satisfies the statute.

The Union is entitled to summary judgment because it has shown an absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law. North Star has failed to support the essential elements of its case on damages. We next address the Union's claims for prejudgment interest and reasonable attorneys' fees.

In its brief in support of its motion for summary judgment on damages, the Union presented authority for the proposition that prejudgment interest may be awarded in a federal labor law case when "the damages from breach of contract are ascertainable with mathematical precision." Glass, Molders Int'l Union v. Owens-Illinois, 758 F. Supp. 962, 975 (D.N.J. 1991) (Gerry, C.J.), *aff'd without opinion*, 941 F.2d 1201 (3d Cir. 1991). The Union attached to that brief a schedule of interest rates used by the National Labor Relations Board in fixing interest payments for monetary awards granted under the National Labor Relations Act.

North Star has failed to respond to the Union's request for prejudgment interest. In addition to being unopposed, the Union's request for prejudgment interest has merit.

This action was brought pursuant to a federal labor law and the damages are ascertainable with precision. Consequently, we are of the view that the Union is entitled to prejudgment interest based on the rate used on backpay awards in actions brought pursuant to the National Labor Relations Act. The period of the Union's award of prejudgment interest shall run from the date each employee's damages accrued to the date of this order.

The final issue raised in the Union's motion is its request for reasonable attorneys' fees. The Union states that because this case is analogous to a Title VII action our discretion in awarding fees should be guided by Title VII case law. The Union's request for fees is unopposed in that North Star has also failed to respond to it.

However, this case is distinguishable from a Title VII action and in our view the boundaries of our discretion in awarding attorneys' fees are delineated by federal labor law. In such cases the Court of Appeals for the Third Circuit has stated that each party must bear its own expenses unless the party against whom fees are sought has litigated in bad faith, vexatiously, or for oppressive reasons. Glass Molders Int'l, *infra.* (citing Mobil Oil Corp. v. Independent Oil Workers Union, 679 F.2d 299, 305 (3d Cir. 1982)).

The Union is not entitled to attorneys' fees because North Star has not litigated in bad faith, vexatiously, or for oppressive reasons.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Union's motion for summary judgment on damages is granted.

2. The Union's request for prejudgment interest is granted.

3. The Union's request for attorneys' fees is denied.

4. Council shall within 20 days attempt in good faith to agree upon a form of proposed order which is consistent with the stipulation of facts and agreements entered into by the parties and consistent with the background of this order and shall file the same within 30 days of this order.

5. If counsel are unable to agree upon such a form of proposed order, each shall file a form of proposed order within 40 days of this order.

6. Each party may within 50 days from the date of this order file objections to the form of proposed order submitted by opposing counsel. Any such objections shall be limited to the alleged inconsistency with the stipulation of facts and agreements entered by the parties and the background of this order.

/s/ Muir
MUIR
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 4:CV-91-1179

(JUDGE MUIR)

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Plaintiff

VS.

NORTH STAR STEEL COMPANY, INC.,
Defendant

ORDER

April 9, 1992

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The above-captioned matter was initiated by a complaint filed on September 9, 1991. In that complaint the Plaintiff United Steelworkers of America asserts that Defendant North Star Steel Company violated the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101 *et seq.*, as a result of North Star Steel Company's failure to give at least 60 days advance notice prior to laying off a substantial portion of its employees on or about February 25, 1991.

On February 24, 1992, the United Steelworkers of America filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure accompanied by a statement of material facts pursuant to Local Rule 401.4, supporting affidavits, and a memo-

randum of law in support of the motion. On March 24, 1992, North Star Steel Company filed its response. In that response North Star Steel Company concedes that its actions constitute a "technical" violation subjecting it to liability under § 2102(a) of the Worker Adjustment and Retraining Notification Act of 1988. However, in that document North Star Steel Company argues that it is entitled to a reduction in the amount of damages to be awarded because its actions were taken in good faith and were not "callous." The United Steelworkers of America filed its reply brief on April 7, 1992, thereby making the matter ripe for disposition.

The Workers Adjustment and Retraining Notification Act of 1988 states that

> If an employer which has violated this chapter proves to the satisfaction of the court that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the Court may, in its discretion, reduce the amount of liability or penalty provided for in this section.

29 U.S.C. § 2104(a)(4). The United Steelworkers of America argues that North Star Steel Company is not entitled to any reduction pursuant to that section. In order to resolve the issue of whether North Star Steel Company is entitled to any reduction in the amount of liability or penalty, we review the circumstances of the plant closing.

There is no genuine issue of material fact and thus the United Steelworkers of America is entitled to judgment as a matter of law. The only remaining issue in this case is whether North Star Steel Company is entitled to a reduction in the amount of liability or penalty.

North Star Steel Company, Inc., operates a plant in Milton, Pennsylvania, which produces hot rolled steel bars and other steel products and employed over 280

individuals. The United Steelworkers of America, AFL-CIO•CLC, is the exclusive bargaining representative for approximately 250 production and maintenance employees of the North Star Steel Company who were employed at the Milton plant.

On February 25, 1991, North Star Steel Company ceased production and laid off approximately 270 employees which constituted almost its entire work force. The United Steelworkers of America did not receive any prior notice of the company's intention to shut down or lay off the employees. The Union first learned of the company's action on the date that it occurred. The Union has never received a notice pursuant to the Worker Adjustment and Retraining Notification Act of 1988 with respect to the company's action taken on February 25, 1991, or any explanation of the company's failure to provide such notice.

North Star Steel Company has not been in operation since the date it laid off its employees. The lay-off which occurred on that date has continued for more than six months and the vast majority of the employees laid off on that date have not returned to work.

North Star Steel Company's response to Plaintiffs' motion for summary judgment states that the plant closing was the result of two factors. Those factors are explained in the affidavit of John F. Smythe, the Vice-President for Industrial Relations for North Star Steel Company, which was submitted with North Star Steel Company's response to Plaintiff's motion for summary judgment.

In his affidavit, Mr. Smythe explains that the decision to cease production at North Star Steel Company's Milton, Pennsylvania, factory

> was based, in part, on an earlier transformer failure which occurred on February 21, 1991. While the breakdown of the transformer would not have required North Star to cease all production and lay

> off the majority of the employees on February 25, 1991, the loss of the transformer would have caused some production to cease and considerable delay would have occurred before the unit was repaired.

Affidavit of John F. Smythe, ¶ 2.

The second reason which allegedly precipitated North Star Steel Company's decision to lay off its employees on February 25, 1991, was "poor market conditions." Id., ¶ 3. In his affidavit Mr. Smythe states that "[t]he Milton facility had 25,943 tons of inventory on hand on [February 25, 1991] which was almost twice the normal amount of inventory. The Milton facility was almost at the limit of its storage capacity." Id.

In its response to Plaintiffs' motion for summary judgment, North Star Steel Company argues that because "no employer can be expected to be prescience (sic) of all events that may produce a WARN Act event," its liability should be reduced pursuant to 29 U.S.C. § 2104 (a)(4).

However, that section states that in order for an employer to be entitled to a reduction of liability, the employer must prove both that "the act or omission that violated this Chapter was in good faith *and* that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter. . . ." Id. (emphasis added). North Star Steel Company's argument that it is entitled to a reduction of liability because it acted in good faith disregards the language requiring the employer to have reasonable grounds for believing that its act or omission was not a violation of the Act. North Star Steel Company's statements fail to show that when it acted the company knew that its failure to provide notification was not a violation of the Worker Adjustment and Retraining Notification Act of 1988.

While Mr. Smythe's statements address the good faith portion of the test in section 2104(a)(4), there is no

evidence on the record addressing whether North Star Steel had reasonable grounds for believing that the act or omission was not a violation of the Worker Adjustment and Retraining Notification Act of 1988.

North Star Steel Company's response to United Steelworkers of America's motion for summary judgment describes its position as being "in a classic 'Catch-22' situation." North Star Steel Company states that at the time it laid off the employees on February 25, 1991, it had no idea how long the lay-off would last. If the company had issued a notice in compliance with the Act on that date, it would have been a violation when issued; if the company proceeded as it actually has, then a violation would accrue when the other statutory prerequisites for a violation were fulfilled.

In the absence of any showing that North Star Steel "had reasonable grounds for believing that the . . . omission was not a violation," 29 U.S.C. § 2104(a)(4), of the Worker Adjustment and Retraining Notification Act of 1988, we are of the view that North Star Steel may not avail itself of the reduction in liability or penalty set forth in that section. Furthermore, North Star Steel Company's argument concedes that on February 25, 1991, North Star Steel Company knew its acts and omissions violated the Worker Adjustment and Retraining Notification Act of 1988.

The United Steelworkers of America's memorandum in support of its motion for summary judgment states the Union's belief that it is "likely that the parties will be able to stipulate to the precise amount and distribution of damages but requests an opportunity to resolve damage disputes on supplemental motion or at an evidentiary hearing." (United Steelworkers of America's memorandum in support of summary judgment, page 12.) Based on that statement, we will provide the parties an opportunity to stipulate to the precise amount and distribution of damages but will require the United Steel-

workers of America to file either a status report or a supplemental motion in the near future.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The United Steelworkers of America's motion for summary judgment is granted.

2. North Star Steel Company, Inc., is not entitled to a reduction in the amount of liability or penalty provided for under the Worker Adjustment and Retraining Notification Act of 1988 pursuant to 29 U.S.C. § 2104(a)(4).

3. The United Steelworkers of America, within 60 days from the date of this order, shall file a status report regarding the parties' progress as to stipulating to damages, or a motion to place the case on a trial list, specifying a September, 1992, November, 1992, or January, 1993 list.

4. The Clerk shall enter judgment in favor of the United Steelworkers of America on the issue of liability.

/s/ Muir
MUIR
U.S. District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number: 4:CV-91-1179

(JUDGE MUIR)

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

v.

NORTH STAR STEEL COMPANY, INC.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment on liability is hereby entered in favor of Plaintiff United Steelworkers of America, AFL-CIO-CLC.

April 9, 1992
Date

LANCE S. WILSON
Clerk

/s/ Barbara Poust
(By) Deputy Clerk

MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
One Commerce Square
417 Walnut Street
Harrisburg, Pennsylvania 17101-1904
Telephone: (717) 237-4000

March 25, 1992

Donald R. Berry, Clerk of Court
United States District Court
Federal Building, 9th Floor
228 Walnut Street
Harrisburg, PA 17108

Re: U.S.W.A. v. North Star Steel
Docket No. 4:CV-91-1179

Dear Mr. Berry:

Enclosed for filing is the original affidavit of John F. Smythe which should be substituted for the faxed copy attached to Defendant's Response to Plaintiff's Motion for Summary Judgment which was filed yesterday.

Sincerely,

/s/ Vincent Candiello
VINCENT CANDIELLO

/rah
enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

No. 4: CV-91-1179

Judge Muir

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Plaintiff,

v.

NORTH STAR STEEL COMPANY, INC.,
Defendant.

AFFIDAVIT OF JOHN F. SMYTHE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

John F. Smythe, being first duly sworn under oath, deposes and states as follows:

1. I am the Vice-President for Industrial Relations for North Star Steel Company ("North Star"). I have personal knowledge of the events relevant to this matter.

2. On February 25, 1991, the Company implemented a decision to cease production at the Milton, Pennsylvania mill and layoff the majority of the employees. This decision was based, in part, on an earlier transformer failure which occurred on February 21, 1991. While the breakdown of the transformer would not have required North Star to cease all production and layoff the majority of employees on February 25, 1991, the loss of the trans-

former would have caused some production to cease and considerable delay would have occurred before the unit was repaired.

3. Poor market conditions also entered into North Star's decision to layoff a number of employees on February 25, 1991. The Milton facility had 25,943 tons of inventory on hand on that date which was almost twice the normal amount of inventory. The Milton facility was almost at the limit of its storage capacity.

4. The Company had no idea on February 25, 1991 how long the layoff would last. The Company did not know sixty days before February 25 that a layoff would be ordered on that date. North Star did not know on February 25 that the layoff would exceed six months or be shorter than six months.

5. North Star has never made the decision that the Milton, Pennsylvania facility should be permanently closed. North Star did not make the decision to close the mill permanently on Febraury 25, 1991 and has not made such a decision to the present date.

6. From February 25 through May 24, 1991, approximately twenty different union employees have been employed by North Star in Milton. Among other things, they have been involved in shipping product during the period of the layoff. Currently, the Milton workforce consists of eighteen people, five of which are members of the union. Four of the union individuals are involved in maintenance activities to keep the machinery in a state of repair so the facility could be re-opened on short notice.

7. North Star has been meeting with the USWA since July or early August 1991 in regard to the Milton facility. The parties have discussed the possible re-opening of the facility on many occasions. North Star has never taken the position that the plant has been permanently closed.

8. North Star continued the health benefits for the entire workforce through March 31, 1991.

FURTHER AFFIANT SAYETH NOT.

/s/ John F. Smythe
JOHN F. SMYTHE

Subscribed and sworn to before me this 24th day of March, 1992.

/s/ Evan A. Audette
EVAN A. AUDETTE
Notary Public